

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 01-cr-40017-012-JPG
)	
KEVIN O. HARDIN,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Kevin O. Hardin's Motion for Leave to Appeal in forma pauperis from the Court's Order dismissing for lack of jurisdiction his Motion for Retroactive Application of Sentencing Guidelines under 18 U.S.C. § 3582(c)(2) and United States Sentencing Guideline Manual ("U.S.S.G.") § 1B1.10 (Doc. 456).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Hardin was sentenced based on relevant conduct that included 13.3 kilograms of crack cocaine. His guideline range was not lowered by a subsequent amendment to the guidelines. In light of the Seventh Circuit's ruling in *United States v. Forman*, 553 F.3d 585, 588 (7th Cir.2009), *cert. denied sub nom McKnight v. United States*, 129 S.Ct. 1924 (Apr. 6, 2009), any argument that this Court has jurisdiction to decide Hardin's Motion is frivolous. Therefore, the Court **CERTIFIES** that this appeal

is not taken in good faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 466).

IT IS SO ORDERED.

Dated: June 11, 2009.

s/ J. Phil Gilbert
J. PHIL GILBERT
U.S. DISTRICT JUDGE